



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Judiciary and Labor

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Thursday, January 21, 2016, 9:00 a.m.
State Capitol, Conference Room 016

by
Elizabeth Zack
Supreme Court Staff Attorney

Bill No. and Title: Senate Bill No. 154, Relating to Attorneys.

Purpose: Establishes that there is no requirement for an attorney to join any association or organization of lawyers to maintain a law license to practice in this State.

Judiciary's Position:

The Judiciary respectfully opposes this bill and offers the following for consideration.

At the outset, the judiciary notes that SB 154 conflicts with established rules of the supreme court governing the practice of law before the courts of the State and the regulation of attorneys appearing before the courts of the State.

Pursuant to Article VI, Section 6 of the Hawai'i Constitution:

The supreme court shall have power to promulgate rules and regulations in all civil and criminal cases for all courts relating to process, practice, procedure and appeals, which shall have the force and effect of law.

In implementing Article VI, Section 6, the supreme court adopted the Rules of the Supreme Court of Hawai'i (RSCH) to govern the practice of law in Hawai'i. RSCH Rule 17 establishes the Hawai'i State Bar. Rule 17(a) provides:



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(a) Pursuant to the powers of the Hawai'i Supreme Court to govern and control the practice of law in Hawai'i, all persons admitted to the practice of law in this State are hereby unified into an organization to be known as the Hawai'i State Bar. The Hawai'i State Bar shall be and remain an independent, member-governed organization, and shall be organized and shall have the powers and responsibilities provided in this Rule and by subsequent order of this court not inconsistent herewith.

RSCH Rule 17(b) sets forth the purpose and powers of the Hawai'i State Bar as follows:

(b) Purposes and powers. The purposes of the Hawai'i State Bar shall be to aid the courts in regulating, maintaining and improving the legal profession, administration of justice and advancements in jurisprudence, in improving relations between the legal profession, the public and the various branches and instrumentalities of government in this State, and in promoting the interests of the profession in this State. The Bar shall have the power and responsibility for administering the statutes and rules of this court relating to governance of the profession (other than statutes and rules governing contempt of court), as follows: (1) The Bar shall assist this court in carrying out the functions under § 605-14, Hawai'i Revised Statutes [Unauthorized Practice of Law], Rule 1 [Admissions], Rule 2 [Discipline], and Rule 10 [Lawyers' Fund for Client Protection] while preserving to this court at all times its ultimate authority over admission and discipline of attorneys licensed to practice in this State; and (2) the Bar shall assume primary responsibility for the other rules of the court and programs relating to the profession, its governance and improvement, including Rule 6 [Professional Corporations], Rule 11 [IOLTA], and Rule 16 [Substance Abuse]. In the latter category, the Bar shall have the power and responsibility not only of administration, but also of initiation of all changes and improvements therein, subject always to the oversight of this court through amendment of this Rule by the supreme court through the procedures set forth in Rule 17(g) of these Rules. In the endeavors set forth immediately above, the Bar shall have as its goal the improvement of the practice of law and the standards of professionalism of all attorneys in this State. The constitution and bylaws adopted by the Bar shall be binding on all members of the Bar in the same manner as the rules of this court.

Although unification of the Hawai'i State Bar by the implementation of RSCH Rule 17 was finalized in 1989, the Hawai'i Supreme Court first considered unification twenty years earlier. The process leading to the supreme court's consideration of the matter is set out in In re Integration of the Bar of the State of Hawai'i, 50 Hawai'i 107, 432 P.2d 887 (1971). As noted



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in that case, the Bar Association of Hawai'i passed a resolution, approved by its members, to present the request for unification to the supreme court. Subsequently, the Association offered its resolution to the legislature. The attempt for legislative action failed because the chair of the Judiciary Committee of the House of Representatives believed the matter was within the judicial, rather than the legislative, branch of government.

Thereafter, the supreme court scheduled an original proceeding to fully consider the matter. The court designated parties to submit briefs both for and against the resolution. To ensure consideration of all aspects of the issues presented, the court granted leave to the Attorney General to intervene. In its brief, the attorney general concluded, after conducting exhaustive independent research, that the supreme court had the inherent or implied power to integrate the bar and the exercise of such power fell within the supreme court's duty to regulate the practice of law in the courts of the State. The AG's brief noted that the United States Supreme Court concluded in Lathrop v. Donohue, 367 U.S. 820 (1961), the requirement that attorneys become members of an integrated bar as a condition of practicing law in a jurisdiction was not unconstitutional.

In resolving the matter on unification in Hawai'i, the Hawai'i Supreme Court concluded it had the inherent power to require every attorney licensed to practice in the State to be a member of a bar association organized pursuant to rules of the court. Nevertheless, the supreme court held the matter in abeyance until the Bar Association of Hawai'i drafted a detailed plan of organization and presented the plan to the supreme court for action.

In the years following the 1971 opinion issued in In re Integration of the Bar, committees were formed to address the issues both for and against the unified bar and to develop a detailed plan for implementation. Finally, in 1989, the supreme court, after submitting RSCH Rule 17 for public comments, adopted RSCH Rule 17 requiring all attorneys licensed in Hawai'i to be members of the Hawai'i State Bar.

The Hawai'i State Bar Association (HSBA) has had many significant achievements since the unification of the bar in 1989. The HSBA established a membership licensing and registration directory that is accessible by the public, and it processes the collection of fees for other supreme court established entities, including the Disciplinary Board of the Hawai'i Supreme Court, the Lawyers Fund for Client Protection, and the Attorneys and Judges Assistance Program. The HSBA has been at the forefront in developing programs for the improvement of the legal profession and the administration of justice in the State. It oversees continuing legal education programs for attorneys. It has worked with the judiciary and the Access to Justice Commission to increase access to justice, including opening self-help centers in every circuit to provide information to self-represented litigants.



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It is clear from the foregoing that the supreme court considered all aspects of a unified bar before adopting RSCH Rule 17 in 1989. The supreme court continues to review and consider ways to improve the rules related to the regulation and oversight of attorneys practicing laws in the State.

Moreover, the judiciary believes the HSBA continues to serve the purpose for which it was organized in 1989. Consequently, the judiciary respectfully opposes the present proposed legislation.

Thank you for the opportunity to comment on Senate Bill No. 154.